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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Implementation of Sections 3(n) and 332)
of the Communications Act)

Regulatory Treatment of Mobile Services)

Amendment of Part 90 of the)
Commission's Rules To Facilitate)
Future Development of SMR Systems)
in the 800 MHz Frequency Band)

Amendment of Parts 2 and 90)
of the Commission's Rules To)
Provide for the Use of 200)
Channels Outside the Designated)
Filing Areas in the 896-901 MHz and)
935-940 MHz Band Allotted to the)
Specialized Mobile Radio Pool)

GN Docket No. 93-252

PR Docket No. 93-144

PR Docket No. 89-553

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OPPOSITION TO PETITIONS FOR RECONSIDERATION

McCaw Cellular Communications, Inc. ("McCaw"),¹ on
behalf of its cellular, messaging, and commercial air-ground
affiliates, hereby responds to certain of the petitions for
reconsideration of the Commission's Third Report and Order in
the above-captioned proceeding.² As discussed below, McCaw
opposes the submissions of the American Mobile
Telecommunications Association ("AMTA") and others³ urging

¹ McCaw is a wholly-owned subsidiary of AT&T Corp.

² Third Report and Order, FCC 94-212 (Sept. 23,
1994).

³ AMTA Petition for Reconsideration and Request for
Clarification at 4 ("AMTA Petition"); E.F. Johnson Petition
for Reconsideration at 2-4 ("E.F. Johnson Petition"); SMR Won
Petition for Partial Reconsideration at 13-14 ("SMR Won
Petition").

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the Commission to adopt a narrower definition of commercial mobile radio service ("CMRS"). This issue is a subject of AMTA's pending petition for reconsideration of the Second Report and Order in this docket,⁴ and should be addressed in that context. Moreover, the Commission has correctly rejected narrow definitions of CMRS that would result in disparate regulation of comparable services. Finally, McCaw believes that the FCC can and should require compliance with all CMRS regulations for those grandfathered Part 90 licensees that benefit from the regulatory flexibility accorded to CMRS operators.

I. THE COMMISSION PROPERLY IMPLEMENTED A COMPREHENSIVE DEFINITION OF CMRS

In the Second Report and Order, the Commission adopted a definition of "commercial mobile service" that is sufficiently broad to further the principal legislative goal of ensuring equivalent regulatory treatment of comparable, competing mobile services. AMTA sought reconsideration of this definition, arguing "that Congress intended the commercial mobile service definition to be interpreted narrowly by the FCC."⁵ According to AMTA, "the Congressional focus was on the prospective equivalency of ESMR, cellular

⁴ Second Report and Order, FCC 94-31 (March 7, 1994).

⁵ AMTA Petition for Reconsideration at 4 (May 19, 1994) (citing Comments of AMTA, GN Docket No. 93-252 (Nov. 8, 1993), 7-11).

and PCS systems" but "Congress had not reached any comparable conclusion regarding systems of substantially more limited scope in terms of geographic coverage or capacity."⁶ Thus, AMTA urged the Commission to modify its CMRS definition to maintain private mobile radio service status "for those smaller carriers whose licensed spectrum cannot support service to a 'substantial portion of the public.'"⁷

Although AMTA's petition concerning the Third Report and Order repeats these arguments, the issue is properly addressed in the context of reconsideration of the Second Report and Order. The issue already is pending before the Commission for its review and need not be addressed again in the context of the Third Report and Order.

Moreover, the Commission has correctly rejected narrow definitions of CMRS that would result in disparate regulation of comparable services. McCaw continues to believe that "[a]ny effort to divert the regulatory focus away from the type of service provided to some other criteria (such as the size of the provider) would be contrary" to the statutory intent of the Omnibus Budget Reconciliation Act of 1993.⁸ The Commission accordingly should refuse AMTA's latest request to create regulatory distinctions based on size or

⁶ Id. at 5.

⁷ Id. at 6.

⁸ McCaw Opposition To Petitions for Reconsideration at 19 (June 16, 1994).

any other classification that would impede the mandate for regulatory parity.⁹

II. THE FCC SHOULD REQUIRE GRANDFATHERED PART 90 LICENSEES THAT BENEFIT FROM THE REGULATORY FLEXIBILITY AFFORDED TO CMRS OPERATORS TO COMPLY WITH ALL CMRS REGULATIONS

AMTA's petition for reconsideration requests clarification that "grandfathered Part 90 licensees . . . are not required to comply with the application and licensing of facilities contained in Rule Section 90.160 through 90.169, or other rules that apply generally to CMRS, prior to August 10, 1996."¹⁰ McCaw opposes this request because it would grant "grandfathered" Part 90 CMRS operators all of the benefits arising out of the recent regulatory reform to a unified structure, including elimination of user eligibility restrictions, deletion of the Part 90 restriction on common carrier communications as it applies to SMR, 220 MHz, Business Radio and Part 90 paging services, and added flexibility in technical parameters, with none of the regulatory burdens shouldered by competing Part 22 CMRS operators. While McCaw recognizes that the legislation permits the FCC to defer application of regulatory changes to

⁹ McCaw specifically opposes the petitions of E.F. Johnson and SMR Won arguing that SMRs should not be subject to CMRS classification. See E.F. Johnson Petition at 2, 6; SMR Won Petition at 13-14.

¹⁰ AMTA Petition at 26.

certain Part 90 offerings,¹¹ the agency should require voluntary compliance with all CMRS regulations for those grandfathered Part 90 licensees that want to benefit from the regulatory flexibility accorded to CMRS operators before the expiration of the grandfathering period. Otherwise, the Commission should defer from providing increased regulatory flexibility to former Part 90 operators until the grandfathering period has expired. Only by concurrently extending both the benefits and burdens of CMRS status can the FCC give effect to the overriding Congressionally-mandated goal of regulatory symmetry that AMTA purports to support.¹²

In a related matter, any new regulatory obligations imposed on CMRS carriers during the grandfathering period also should be applied to Part 90 CMRS providers. Examples of such obligations include any conditions imposed by the FCC at the conclusion of its ongoing rulemaking concerning equal access and interconnection. Because any such burdens are

¹¹ Indeed, the legislation states that "any private land mobile radio service provided by any person before such date of enactment . . . shall . . . be treated as a private mobile service until 3 years after the date of enactment." § 6002(c)(2)(B), 107 Stat. 396. Thus, the statute does not require grandfathering of an offering provided by a reclassified Part 90 licensee to the extent that the offering takes advantage of regulatory reforms for CMRS providers and is beyond the scope of a "private land mobile radio service provided . . . before [the] date of enactment." Only those offerings that were -- and remain -- purely private land mobile radio services are required to be grandfathered.

¹² See, e.g., AMTA Petition at i, 1.

entirely new to both reclassified Part 90 and Part 22 CMRS operators, no reason exists to provide special treatment for "grandfathered" Part 90 licensees by deferring the effective date of new regulations for only that set of service providers. On the other hand, interests of regulatory symmetry argue strongly for ensuring that all land mobile licensees compete under the same regulatory ground rules. Thus, any new regulations imposed upon CMRS operators also should be imposed upon "grandfathered" Part 90 CMRS licensees.

III. THE COMMISSION'S RULES AND POLICIES SHOULD ENCOURAGE LICENSEES TO WORK TOGETHER TO RESOLVE INTERFERENCE

McCaw urges the Commission to be cognizant of the practical effects that the new rules may have on the CMRS marketplace and to plan accordingly. The array of new service providers entering the market and the recently adopted more flexible power limitations are likely to increase the potential for harmful interference to facilities. Thus, the agency must have processes in place to encourage licensees to work together both to avoid such interference altogether and to resolve it to the best of their abilities when it occurs.

IV. CONCLUSION

In sum, McCaw opposes the petitions of AMTA and others requesting Commission adoption of a narrower definition of

CMRS. This Issue already is pending before the agency for its review and should be addressed in the context of the Second Report and Order reconsideration proceedings. The FCC has correctly rejected narrow definitions of CMRS that would thwart the goal of regulatory symmetry and should similarly refuse these latest requests for disparate treatment of comparable services. Furthermore, to ensure that all land mobile licensees compete under the same regulatory ground rules, the Commission must impose all CMRS regulations on those grandfathered Part 90 licensees that benefit from the regulatory flexibility accorded to CMRS operators. Finally, McCaw urges the FCC to develop rules and policies that encourage licensees to work together to resolve interference.

Respectfully submitted,

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January 20, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of January, 1995, I caused copies of the foregoing "Opposition to Petitions for Reconsideration" to be mailed via first-class postage prepaid mail to the following:

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